

# **UPTON, MASSACHUSETTS**

## **WETLANDS PROTECTION** **BYLAW** **REGULATIONS**

Adopted by vote of Conservation Commission on February 25, 2009 and certified at Annual Town Meeting on May 7, 2009

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**TOWN OF UPTON**  
**WETLANDS PROTECTION BYLAW REGULATIONS**  
**(January 14, 2009)**

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**TOWN OF UPTON  
WETLAND PROTECTION BYLAW REGULATIONS**

**I. GENERAL PROVISIONS**

**A. Introduction**

These regulations are promulgated by the Upton Conservation Commission pursuant to the authority granted to the Commission under Section 8 of the Town of Upton Wetlands Protection Bylaw. These rules and regulations complement the bylaw and shall have the force of law upon their effective date.

**B. Purpose**

1. The Upton Wetlands Protection Bylaw sets forth a public review and decision-making process by which activities affecting resource areas subject to protection under the bylaw are to be regulated in order to contribute to the following interests (collectively the “resource interests protected by this bylaw”):

- a. protection of public and private water supply
- b. protection of groundwater
- c. flood control
- d. erosion and sedimentation control
- e. storm damage prevention
- f. protection of water quality
- g. water pollution control
- h. protection of wildlife habitat
- i. protection of rare species habitat
- j. protection of agricultural value
- k. protection of recreation value

2. These regulations serve to implement the Upton Wetlands Protection Bylaw by establishing standard definitions, uniform procedures, design specifications, and performance standards by which the Commission may carry out its responsibilities under the bylaw.

**C. Statement of Jurisdiction**

1. Areas Subject to Protection under the Bylaw

- a. any freshwater wetland (including marshes, wet meadows, bogs, and swamp, isolated wetland, vernal pool, bank, reservoir, pond, or intermittent stream);
- b. any land within 100 feet of the areas set forth in Sec.I. C.1.a above;
- c. any river, perennial stream, lake or pond (greater than 20,000 square feet in size);
- d. any land within 200 feet of the water bodies set forth in Sec.I. C.1.c above;
- e. any land under any of the water bodies set forth in Sec.I. C.1.a and Sec.I. C.1.c above;
- f. any land subject to flooding or inundation by groundwater, surface water, or storm flowage.

2. Activities Subject to Regulation Under the Bylaw
  - a. Any activity proposed or undertaken which constitutes removing, filling, dredging, building upon, degrading, discharging into, or otherwise altering any areas specified in Section I. C.1 above is subject to regulation under the bylaw and requires the filing of a Notice of Intent (NOI).
  - b. Any person desiring to know whether or not a proposed activity or an area is subject to the bylaw may request in writing a determination of applicability from the Commission. Such a Request for Determination (RFD) shall be submitted pursuant to Section III. C of these regulations.
  - c. Any person desiring to know the boundaries of area(s) subject to the bylaw may request in writing a determination from the Commission by submitting an Abbreviated Notice of Resource Area Delineation (ANORAD) pursuant to Section III. C of these regulations.
  - d. Informal consultations with the Commission regarding the applicability of these Regulations are encouraged.

#### **D. Exceptions and Variances**

1. Conditional Exceptions
  - a. The application and permit required by the bylaw shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services, or sanitary or storm sewers, provided that written notice has been given to the Commission prior to the commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
  - b. The application and permit required by the bylaw shall not be required for work performed for normal maintenance or improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.04.
  - c. The application and permit required by the bylaw shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to the commencement of the work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by the bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.
  - d. Activities in the buffer zone on single-family house lots recorded before and with a house constructed before May 1, 2004 shall be exempt from the bylaw and these regulations. This exemption in no way implies exemption from applicable regulation under the Wetlands Protection Act or MA Endangered Species Act.

- e. The application and permit required by the bylaw shall not be required for minor activities within the buffer zone or riverfront area, provided they meet the requirements outlined herein. Minor activities include, but are not limited to:
  - i. unpaved pedestrian walkways for private use;
  - ii. plantings of native species of trees, shrubs, or groundcover, but excluding turf lawns;
  - iii. the conversion of impervious to vegetated surfaces, provided erosion and sedimentation controls are implemented during construction;
  - iv. fencing, stonewalls, and stacks of cordwood provided they will not constitute a barrier to wildlife movement and fences to contain livestock are located more than 100 feet from the mean annual high water line within a riverfront area or 50 feet from other resource areas, whichever is farther;
  - v. mowing of lawns and pruning of pre-existing landscaped areas;
  - vi. vista pruning, provided the activity is located more than 100 feet from the mean annual high water line within a riverfront area or 50 feet from other resource areas, whichever is farther;
  - vii. conversion of lawn to uses accessory to existing single-family houses such as decks, sheds, patios, pools, and gardens provided the activity is located more than 100 feet from the mean annual high water line within a riverfront area or 50 feet from other resource areas, and erosion and sedimentation controls are implemented during construction;;
  - viii. removal of dead and dying trees that pose a hazard to structures or public safety;
  - ix. repair of existing structures provided footprint of structure does not change and erosion and sedimentation controls are implemented during construction; and,
  - x. activities that are temporary in nature, have negligible impacts, and are necessary for planning and design purposes (e.g., installation of monitoring wells, exploratory borings, sediment sampling and surveying) provided that erosion and sedimentation controls are implemented.
- f. Other than stated in this section, the exceptions provided in the Wetlands Protection Act (G.L. Ch. 131 Sec. 40) and regulations (310 CMR 10.00) shall not apply under the bylaw.

## 2. Variances

- a. The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation. The applicant must demonstrate that desirable relief may be granted without material detriment to the values protected by the bylaw and without substantially derogating from the intent or purpose of the bylaw. It shall be the responsibility of the applicant to provide the Commission with any and all information which the Commission may request in order to enable the Commission to ascertain any such material detriment to the values protected

by the bylaw. The failure of the applicant to furnish any of the information so requested shall result in the denial of a request for a variance pursuant to this subsection.

- b. The Commission may impose conditions, safeguards, and limitations in a variance to protect further the interests protected by the bylaw or the intent or purpose of the bylaw.
- c. A variance shall expire on a date specified by the Commission, not later than three years from the date of issuance of the permit, and may be reestablished only after notice and a new hearing pursuant to this section.

#### **E. Burden of Going Forward and Burden of Proof**

1. The applicant shall have the burden of going forward by providing credible evidence from a competent source in support of all matters asserted by the applicant in accordance with the burden of proof pursuant to Sec. I. E.2 below.
2. The applicant shall have the burden of proving by a preponderance of the credible evidence that the activities proposed in the application will not have a significant or cumulative effect on the values protected by the bylaw. Failure to meet the burden of proof shall be cause for the Commission to deny the application for permit, along with any work or activity proposed herein.

#### **II. DEFINITIONS**

Except as provided in these regulations, the definitions of terms shall be as set forth in the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00).

1. Abutter shall mean those property owners where land abuts the subject land described in a plan subject to Commission review including those across a traveled way, across a body of water, and those within 300 feet of the subject parcel lot lines.
2. Activity means any form of draining, dumping, dredging, damming, discharging, excavating, filling, or grading; the erection, reconstruction, or expansion of any buildings or structures; the driving of pilings or erection of walls; the construction or improvement of roads and other ways; the changing of runoff characteristics; the intercepting or diverting of ground or surface water; the installation of drainage, sewage, or water systems; the discharging of pollutants; the destruction of plant life; or any other changing of the physical characteristics of land, or of the physical, biological, or chemical characteristics of water.
3. Alter means, without limitation, the following actions when undertaken upon or affecting any of the areas subject to protection under the bylaw and listed in Sec. I. C.1 of these regulations:
  - a. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
  - b. Changing the pre-existing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
  - c. Drainage, or other disturbance of water level or water table;

- d. Dumping, discharging, or filling with any material which may degrade water quality;
  - e. Placing of fill, or removal of material which would alter elevation;
  - f. Driving of piles, erection, expansion or repair of buildings, or structures of any kind;
  - g. Placement of obstructions or objects in water;
  - h. Destruction of plant life including cutting or trimming of trees and shrubs;
  - i. Changing temperature, biochemical oxygen demand, or other physical or chemical characteristics of any waters;
  - j. Any activities, changes, or work which cause or tend to contribute to pollution of any body of water or groundwater;
  - k. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by the bylaw.
4. Amendment means a change in a proposed project that the Commission deems of sufficient magnitude to require the imposition of additional conditions to ensure adequate protection of resource areas and interests covered under the bylaw and regulations.
  5. Applicant means a person filing an application for a permit, or a person on whose behalf an application is filed.
  6. Application for Permit means the permit application filed by any person intending to remove, fill, dredge, or alter any Resource Area under the Upton Wetlands Protection Bylaw.
  7. Area Subject to Flooding means depressions or closed basins that serve as ponding areas for runoff, snowmelt, heavy precipitation, or high ground water that has risen above the ground surface, and areas which flood from a rise in a bordering waterway or water body as defined in the Wetlands Protection Act Regulations (310 CMR 10.57).
  8. Area Subject to Protection under the Bylaw means any area specified in Sec. I. C.1 and is used synonymously with Resource Area.
  9. Buffer Zone means that area of land extending 100 feet horizontally from the boundary of any Resource Area specified in Sec. I. C.1a.
  10. Bylaw means the Upton Wetlands Protection Bylaw.
  11. Certificate of Compliance means a written determination by the Commission that the proposed work or a portion thereof has been completed in accordance with a Permit.
  12. Conditions means those requirements set forth in a written permit issued by the Commission for the purpose of permitting, regulating, or prohibiting any activity that removes, fills, dredges, builds upon, or alters any Resource Area.
  13. Conservation Commission or Commission means that body comprised of members lawfully appointed pursuant to MGL Ch. 40 Sec. 8C.

14. Determination (of Applicability) means a written finding by the Commission as to whether an area or an activity is subject to the jurisdiction of the bylaw.
15. Enforcement Order means a written notice issued by the Commission requiring the cessation of all activities that are in violation of M.G.L. Ch. 131 Sec. 10 or of the bylaw.
16. Interest means the resource values (collectively, the “interests protected by the bylaw”) specified in Sec. I. B of these regulations.
17. Isolated Wetlands are wet meadows, marshes, swamps and bogs where the topography is typically low and flat and where soils are annually saturated such that groundwater, flowing or standing surface water provides a significant part of the supporting substrate for a plant community. Isolated wetlands are generally found within depressions and do not border creeks, rivers, streams, ponds, lakes or other bodies of water or wetlands. Wetland indicator plants shall include but not necessarily be limited to those plant species identified in the Act. Wetland indicator plants are also those classified in the indicator categories of Facultative, Facultative+, Facultative Wetland-, Facultative Wetland, Facultative Wetland+, or Obligate Wetland in the National List of Plant Species That Occur in Wetlands: Massachusetts (Fish & Wildlife Service, U.S. Department of the Interior, 1988). The presence of hydric soils or other indicators of wetland hydrology will also be considered when delineating wetland boundaries. The boundary of isolated wetlands is the line within which the vegetation community is substantially characterized by wetland indicator species and within which hydric soils or other indicators of wetland hydrology are present. When vegetation appears to have been altered or is absent, the boundary is the line within which hydric soils and/or indicators of wetland hydrology are present.
18. Majority means more than half of the members of the Commission then in office.
19. Notice of Intent (NOI) means the written application for permit filed by any person intending to remove, fill, dredge, or alter any Resource Area under the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, Sec.40).
20. Obstructions or Objects in Water means but is not limited to debris, dams, weirs, sluice gates, docks, bulkheads, pilings, and floats.
21. Order of Conditions means the written document issued by the Commission containing conditions which regulate or prohibit an activity in a Resource Area under the Wetlands Protection Act.
22. Owner means the person who own the property upon which the activity(ies) is (are) proposed.
23. Permit means the document issued by the Commission containing conditions which regulate or prohibit an activity under the bylaw. The Commission in an appropriate case may combine the Permit or other action on an application issued under the bylaw with the Order of Conditions issued under the Wetlands Protection Act (M.G.L. Ch. 131, Sec. 40).

24. Person means any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, the Town of Upton, or any other legal entity, its legal representatives, agents, or assigns.
25. Plans mean such data, maps, engineering drawings, calculations, specifications, schedules, and other materials, if any, deemed necessary by the Commission to describe the area and the activity; to determine the applicability of the bylaw; or to determine the impact of the proposal upon the interests identified in the bylaw.
26. Pond means any open body of fresh water, at least 2,000 square feet or larger, either naturally occurring or man-made, which has standing water due to natural causes throughout the year during most years. Basins or lagoons which are part of waste water treatment plants shall not be considered ponds, nor shall swimming pools or other impervious man-made retention or detention basins.
27. Quorum means the majority of the duly appointed members of the Commission that when duly assembled is legally empowered to transact business.
28. Rare Species Habitat means those areas providing habitat for species of wildlife and/or plants listed as endangered, threatened or of special concern by the Massachusetts Division of Fisheries and Wildlife regardless whether the site in which they occur has been previously identified by the Division.
29. Request for Determination (of Applicability) means a written request made by any person to the Commission for a determination as to whether an area or activity is subject to the bylaw.
30. Resource Area means any area specified in Sec. I C.1 and is synonymous with Area Subject to Protection under the Bylaw.
31. River means any naturally flowing body of water that empties to any ocean, lake, pond, or river, and which flows throughout the year.
32. Riverfront Area means the area within 200 feet of rivers (includes perennial streams), lakes or ponds (20,000 square feet or larger).
33. Stream means any body of running water, including brooks and creeks, which moves in a definite channel in the ground due to the hydrologic gradient. A portion of a stream may flow through a culvert or beneath a bridge. A stream may be intermittent (does not flow throughout the year) or perennial (flows throughout the year during most years). A stream is located downgradient of and hydrologically connected to a wetland.
34. Town means the Town of Upton.

35. Vernal Pool means, in addition to scientific definitions found in 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways, which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibians, reptiles, or other vernal pool community species, regardless of whether the site has been certified the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be 100 feet outward from the mean annual high-water line defining the depression, but shall not include existing lawns, gardens, landscaped or developed areas.

36. Wetland is defined in the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.

### **III. PROCEDURES**

#### **A. Time Periods**

All time periods of ten days or less specified in the bylaw and in these regulations shall be computed upon business days only. In the case of a Determination or Permit, such period shall commence on the first day after the date of issuance and shall end at the close of business on the tenth business day thereafter. All other time periods specified in the bylaw and these regulations shall be computed on the basis of calendar days, unless the last day falls on a Saturday, Sunday, or legal holiday, in which case the last day shall be the next business day following.

#### **B. Actions by Conservation Commission**

Where the bylaw states that a particular action (except receipt of a Request for Determination, Abbreviated Notice of Resource Area Delineation, or Application for Permit) is to be taken by the Commission, that action is to be taken by more than half the members present at a meeting of at least a quorum. Where the bylaw states that a permit or notification shall be issued by the Commission, that action is to be taken by a majority of the members then in office, who need not convene as a body in order to sign said permit or notification, provided they met pursuant to the Open Meeting Law (G.L. Ch. 39 Sec. 23A-23C) when voting on the matter.

#### **C. Determination of Applicability and Abbreviated Notice or Resource Area Delineation**

##### **1. General**

Any person who desires a Determination as to whether the bylaw applies to an area or activity, or who desires to confirm the delineation of wetland resource area boundaries on a parcel of land comprised of three acres or less may submit to the Commission by certified mail or hand delivery two copies of a Request for Determination of Applicability (RDA). The RDA shall include such data and plans as are required by the Commission. Any person who desires to confirm the delineation of wetland resource area boundaries on a parcel of land greater than three acres in size shall submit a written request to the Commission and shall, in addition, file with the Commission

an Abbreviated Notice of Resource Area Delineation (ANORAD) as specified under MGL Chapter 131, Section 40.

## 2. Filing Procedure

Any person filing an ANORAD with the Commission shall at the same time give written notice thereof, by certified mail or hand delivery, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant (including any in another municipality or across a body of water). The notice shall enclose a copy of the ANORAD with plans, or shall state where copies of plans may be examined and obtained. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, and the notice of the hearing shall be sent by the Commission to the owner as well as the person making the request. At this time the Commission is not requiring abutter notification for the filing of a RDA since it is the opinion of the Commission that the types of projects filed under a RDA are typically minor or, conversely, will require the filing of an Application of Permit which requires abutter notification (see Section D of this Section).

## 3. Notices to Other Departments

At this time the Commission is not requiring notification to other departments for the filing of a RDA since it is the opinion of the Commission that the types of projects filed under a RDA are typically minor or, conversely, will require the filing of an Application of Permit which requires notification to other departments (see Section D of this Section).

## 4. Public Hearing

Within 21 days after the date of receipt of a completed RDA or ANORAD, the Commission shall hold a public hearing on the request. Notice of the time and place of the public hearing at which the Determination or Order will be made shall be given by the Commission at the expense of the person submitting the RDA or ANORAD not less than five business days prior to such hearing, by publication in a newspaper of general circulation in the Town. The Commission may combine its hearing under the bylaw with the hearing conducted under the Wetlands Protection Act (G.L. Ch.131, §40) and Regulations (310 CMR 10.00) in appropriate cases.

## 5. Determination

Prior to making a Determination or Order, the Commission may require the submission of additional data deemed pertinent to the determination. The Commission shall issue its Determination or Order in writing within 21 days of the close of the public hearing. The determination shall be signed by a majority of the Commission and shall be sent by the Commission to the person making the request. A Determination or Order shall be valid for three years from the date of issuance.

## **D. Application for Permit**

### **1. General**

Any person who proposes work that will remove, fill, dredge, build upon, or alter any resource area shall submit an Application for Permit and other application materials as further defined below. In appropriate cases, the Commission may accept as the Application for Permit and supporting application materials under the bylaw the Notice of Intent and plans filed under G.L. Ch. 131, § 40.

### **2. Filing Procedure**

Any person filing an Application for Permit with the Commission shall at the same time give written notice thereof, by certified mail or hand delivery, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant (including any in another municipality or across a body of water). The notice shall enclose a copy of the Application for Permit with plans, or shall state where copies of plans may be examined and obtained. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, and the notice of the hearing shall be sent by the Commission to the owner as well as the person making the request.

### **3. Notices to Other Departments**

Any person filing an Application for Permit with the Commission shall provide a copy thereof at the same time, by certified mail or hand delivery, to the Planning Board, Board of Health, and Building Inspector. A copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality, if the Application for Permit pertains to property within 300 feet of that municipality. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the boards and officials have had 14 days from receipt of to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to respond to such written comments and recommendations at a hearing of the Commission prior to final action.

### **4. Public Hearing**

Within 21 days after the date of receipt of a completed Application for Permit, the Commission shall hold a public hearing. Notice of the time and place of the public hearing at which the permit decision will be made shall be given by the Commission at the expense of the person submitting the Application for Permit not less than five business days prior to such hearing, by publication in a newspaper of general circulation in the Town. The Commission may combine its hearing under the bylaw with the hearing conducted under the Wetlands Protection Act (G.L. Ch.131, §40) and Regulations (310 CMR 10.00) in appropriate cases.

## 5. Permits and Decisions

The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need of additional information from the applicant or other reasons deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials listed in III. D.3 above. The Commission shall issue its permit decision in writing within 21 days of the close of the public hearing. The permit approval shall be signed by a majority of the Commission and shall be sent by the Commission to the applicant. A permit approval shall be valid for three years from the date of issuance. In the event of a decision that is unfavorable to the applicant, the Commission will consider revised plans without prejudice and without collection of additional filing fees under the bylaw.

## **E. Permits and Conditions Regulating the Work**

1. Within 21 days of the close of the public hearing the Commission shall issue or deny the Permit. If the Permit is issued, it shall impose such conditions as are deemed necessary for the protection of one or more of the interests identified in the bylaw and these regulations (Sec. I.B.1) and all activities shall be done in accordance with these conditions. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.
2. If the Permit is denied, it shall be for one or more of the following reasons:
  - a. for failure to meet the requirements of the bylaw;
  - b. for failure to submit necessary information or plans requested by the Commission;
  - c. for failure to meet design specifications, performance standards, or other requirements in these Regulations;
  - d. for failure to avoid or prevent unacceptable significant or cumulative effects upon the Resource Area values protected by the bylaw; or
  - e. where no conditions are adequate to protect the resource values protected by the bylaw.
3. The Permit shall be signed by a majority of the Commission and shall be mailed or hand delivered to the applicant, his agent, or the owner of record.
4. A Permit shall expire three years from the date of issuance. The Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.
5. For good cause the Commission may revoke any permit, other order, determination or other decision issued under this bylaw after notice to the holder of the permit, the public, abutters, and town boards, pursuant to §III.C and III.D.

6. Amendments to permits or determinations shall be handled in the manner set out in the Wetlands Protection Act Regulations (310 CMR 10.00) and policies thereunder.
7. The Commission in an appropriate case may combine the decision issued under the bylaw with the Order of Conditions, Order of Resource Area Delineation, Determination of Applicability, or Certificate of Compliance issued under the Wetlands Protection Act and Regulations (310 CMR 10.00).
8. Prior to the commencement of any work permitted or required by the Permit, the Permit shall be recorded in the registry of Deeds or the land court for the district in which the land is located within the chain of title of the affected property. In the case of recorded land, the Permit shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Permit shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of recording shall be sent to the Commission. If work is undertaken without the applicant first recording the Permit, the Commission may record the documents itself or issue an Enforcement Order.

#### **F. Extension of Permit**

1. The Commission may extend a Permit once for an additional three-year period. Requests for extension shall be made to the Commission in writing at least 30 days prior to the expiration of the Permit. Additional extensions beyond the initial extension will not be granted unless the applicant can demonstrate substantial progress towards project completion.
2. The issuing authority may deny the request for an extension and require the filing of a new Application for Permit for the remaining work in the following circumstances:
  - a. where no work has begun on the project, except where such failure is due to an unavoidable delay, such as appeals, in the obtaining of other necessary permits;
  - b. where new information, not available at the time the Permit was issued, has become available and indicates the permit is not adequate to protect the interests identified in the bylaw;
  - c. where incomplete work is causing damage to the interests identified in the bylaw;
  - d. where work has been done in violation of the Permit or these Regulations.
3. If issued by the Commission, the Extension Permit shall be signed by a majority of the Commission.
4. The Extension Permit shall be recorded in the Registry of deeds or land Court, whichever is appropriate. Certification of recording shall be sent to the issuing authority. If work is undertaken without the applicant so recording the Extension Permit, the Commission may issue an Enforcement Order.

## **G. Security**

As part of a permit or variance issued under the bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or both of the methods described below:

1. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.
2. By acceptance of a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town, whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed (such method to be used only with the consent of the applicant).

## **H. Certificate of Compliance**

1. Upon completion of the work for which a permit was issued, the applicant may request in writing a Certificate of Compliance, certifying that the activity or portions thereof described in the application and plans has been completed in compliance with the permit. If issued by the Commission, the Certificate of Compliance shall be signed by a majority of the Commission.
2. Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by members or agents of the Commission in the presence of the applicant or the applicant's agent.
3. If the Commission determines, after review and inspection, that the work has not been done in compliance with the permit, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued in writing within 21 days of receipt of a request for a Certificate of Compliance, specifying the reasons for denial.
4. If a project has been completed in accordance with plans stamped by a registered professional engineer, architect, landscape architect, or land surveyor, a written statement by such a professional person certifying compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the permit shall accompany the request for a Certificate of Compliance.
5. If the activity or portions thereof described in the Application for Permit and plans has been completed in compliance with the permit, a Certificate of Compliance shall be issued by the Commission within 21 days of receipt thereof.
6. If the permit contains conditions which continue past the completion of work, such as maintenance or monitoring, the Certificate of Compliance shall specify which, if any, of such

conditions shall continue. The Certificate shall also specify to what portions of the work it applies, if it does not apply to all work regulated by the permit.

7. The applicant shall submit the Certificate of Compliance to the Registry of deeds or Land Court, whichever is appropriate, to be recorded, and shall send proof of the recording to the Commission.

## **I. Enforcement**

1. Whenever an application is made to the Commission, the Commission, its agents, officers, and employees shall have authority to enter upon privately owned land at reasonable times for the purpose of performing their duties under the bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitution and laws of the United States and the Commonwealth.
2. The Commission shall have authority to enforce the bylaw, its regulations, and permits and variances issued thereunder by violation notices, enforcement orders, non-criminal citations under G.L. Ch. 40 §21D, and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.
3. Upon request of the Commission, the Board of Selectmen and Town Counsel may take legal action for the enforcement under the civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law.
4. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
5. Any person who violates any provision of the bylaw, these regulations, permits or enforcement orders issued thereunder, shall be fined not more than \$300, commencing the day on which the violation has been confirmed by the Commission or its agents. Each day or portion thereof during which the violation continues shall constitute a separate offense, and each provision of the bylaw, regulations, permit, or enforcement order violated shall constitute a separate offense. Fines levied under this bylaw shall be paid to Town of Upton.

## **J. Appeal**

Any person may appeal the decision of the Commission to Superior Court under provisions of G.L., Ch. 249 § 4. Such appeal shall be made within 21 days of the date of issuance of the Commission's decision. Notice of said appeal and a copy of the complaint shall be sent, by certified mail return receipt requested or hand delivery, to the Commission and the Town Counsel so as to be received within said 21 days.

## **K. Severability**

The invalidity of any section or provision of these regulations shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination previously issued.

## **L. Effective Date**

These regulations shall become effective upon passage by a majority of the Commission and 10 days after filing with the Town Clerk (or until voted at Town Meeting if challenged by petition of 25 or more voters of the Town). The provisions of these regulations shall apply to all work performed after that date.

# **IV. GENERAL STANDARDS FOR RESOURCE AREAS**

## **A. General**

Except as other specifically provided in these regulations, the Commission shall apply the performance standards contained in the Wetlands Protection Act Regulations (310 CMR 10.00) as they may be amended from time to time. Presumptions of significance contained in 310 CMR 10.00 shall extend to the values protected by the bylaw.

## **B. Freshwater and Isolated Wetlands**

Except as provided in this subsection, the Performance Standards contained in the DEP Regulations, currently codified at 310 CMR 10.55, shall apply. Prior to permitting work which shall alter a Freshwater Wetland or Isolated Wetland, the Commission shall require the applicant to demonstrate by a preponderance of credible evidence that there is no feasible alternative to the work proposed which affords practical use of the land and which would avoid or reduce such alteration. Replacement of Freshwater Wetlands or Isolated Wetlands with surface area equal to that altered is a minimum standard. In its discretion, the Commission may require replacement with an area greater than that altered. In exercising this discretion, the Commission shall consider the nature and significance of the Resource Area, the topography and other characteristics of the site, the difficulty of replacement, the area of land available, and other such factors as the Commission may determine to be relevant in a particular case. Replacement may not be required, in the Commission's discretion, when the alteration is temporary (i.e. during pipeline construction) and restoration of the disturbed area can be achieved.

## **C. Riverfront Area**

In the review of areas within 200 feet of rivers (including perennial streams), lakes and ponds (over 20,000 square feet), no activities requiring a permit unless the applicant, in addition to meeting the otherwise applicable requirements of the bylaw, has demonstrated by a preponderance of the evidence that: 1) there is no practicable alternative to the proposed project with less adverse effects, and that 2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or interests protected by the bylaw. The Commission shall

regard as practicable an alternative that is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.

**D. Land Subject to Flooding**

Except as provided in this subsection, the Performance Standards contained in the DEP Regulations, currently codified at 310 CMR 10.57, shall apply. Prior to permitting any work that will alter Land Subject to Flooding, the Commission shall require the applicant to demonstrate by a preponderance of credible evidence that there is no feasible alternative to the work proposed affording equivalent use of the land and which would avoid or reduce alteration. Creation of compensatory flood storage equal in volume to that displaced by the proposed project is a minimum standard. In its discretion, the Commission may require compensatory flood storage of greater volume. In exercising this discretion, the Commission shall consider the extent of flooding and the resulting flood hazard, the topography of the site, the area of land available, and such other factors as the Commission may determine to be relevant in a particular case.

**E. Buffer Zone**

Buffer Zones are essential for protection of Resource Interests and Areas Subject to Protection under the Bylaw. A Buffer Zone adjacent to an Area Subject to Protection reduces adverse impacts to the wetland functions and values from nearby activities. A naturally vegetated Buffer Zone functions to protect the wetland interests included in the Bylaw. The elements of a Buffer Zone include setback distance, amount and type of vegetation, soil composition and slope of the land. Interaction of all of these elements determines the effectiveness of the Buffer Zone.

1. Presumptions - Based on experience to date with projects within one hundred (100) feet of Area Subject to Protection, the Commission shall presume that work in the categories below, within the tabulated distances from an Area Subject to Protection, will result in alteration of the Area Subject to Protection. This presumption is rebuttable and may be overcome upon a showing by a preponderance of credible evidence that the nature of the proposed work, special design measures, construction controls or site conditions will prevent alterations of the Area Subject to Protection. For the purposes of the table below, "disturb" means filling, excavation, grading, operation of motorized construction equipment and storage or stockpiling of earth or construction materials, alteration of vegetation, and "building" means a structure requiring a building permit or placement of any impervious surface.

<b>Type of Project/Resource</b>	<b>No Disturb Zone (ft)</b>	<b>No Building Zone (ft)</b>
<i>Freshwater/Isolated Wetlands</i>		
Residential Lot	30	50
Commercial/Industrial	30	75

Septic System	100	100
Driveways/Utilities Other Roads/Drainage	30 (except for permitted crossings)	
<b><i>Vernal Pool Resource Area</i></b>	0	30
<b><i>Ponds</i></b>	100	100
<b><i>Rivers and Streams</i></b>		
Perennial Stream/River	100	200
Intermittent Stream	30	50
Driveways/Utilities Other Roads/Drainage	30 (except for permitted crossings)	

Notwithstanding the foregoing, the following activities shall not be subject to this Section:

- a. Mowing lawns (planting new lawn areas is subject to this Section);
  - b. Activities that are temporary in nature and have a negligible impact and which upon completion, leave the buffer zone in its immediately pre-existing condition, examples of which are seasonal storage of boats where there is no impact to natural vegetation, seasonal firewood piles, temporary erection of tents and placement of lawn furniture;
  - c. The maintenance, repair or replacement, but not enlargement, of any structure for which a building permit or certificate of occupancy has been issued as of the effective date of these Regulations, however, all other Sections of these Regulations do apply.
2. Protective vegetative cover shall be maintained on all embankments facing lakes, ponds, marshes, streams and marine waters. In particular:
    - a. no removal of low brush within 30 feet of a Resource Area; however, brush may be topped to a height of two feet; and
    - b. no clear-cutting of standing trees and surface vegetation, only selective thinning of standing trees with under 4 inch dbh (diameter at breast height), consistent with vista pruning as defined in 310 CMR 10.04.
  3. Any area proposed for removal of vegetation where soil will be exposed for more than 10 days shall be mulched or otherwise treated to prevent erosion.

## **F. Vernal Pool**

Vernal pools and their associated uplands are critical to the protection of wildlife habitat and rare plant and animal habitat. Vernal pools constitute a unique and increasingly rare type of wetland that is inhabited by many species of wildlife, some of which are totally dependent on vernal pools and their associated upland habitat for their survival. Areas in the immediate vicinity of the vernal pool provide these species with important non-breeding habitat functions, such as

migratory pathways, feeding, shelter, and over-wintering sites. Many other species utilize vernal pools and their associated uplands for breeding and non-breeding functions, although they are not restricted to this type of wetland. The protection of vernal pools and their associated upland habitats is essential for the survival of wildlife species that depend on these unique and threatened resource areas.

The boundary of the resource area for vernal pools is 100 feet outward from the mean annual high-water line defining the depression, but shall not include existing lawns, gardens, landscaped or developed areas. No project or activity shall have an adverse effect on a vernal pool or vernal pool biota by altering the topography, soil structure, plant community composition, hydrologic regime and/or water quality of the vernal pool resource area. It is presumed, unless compelling evidence to the contrary is provided, that the following activities within the Vernal Pool Resource Area would fail to meet the aforementioned Performance Standards:

1. Disturbing the soil, humus layer and/or leaf litter at any time of the year;
2. The placement of sediments, brush clippings or other fill;
3. The changing of drainage patterns;
4. Alterations to vegetation of the canopy and/or understory (shrub layer).

The burden of proof shall be on the applicant to demonstrate that any proposed project/activity within the Vernal Pool shall meet the Performance Standards as described above.

## **G. Intermittent Stream**

Streams, including intermittent streams, are important for storm damage prevention, flood control, ground water protection, wildlife habitat, coldwater fisheries, water quality protection and recreation values. During spring, summer, and fall these streams disperse snowmelt and storm runoff across the landscape thereby preventing dangerous volumes and flows from spilling over roadways and property. This broad dispersal also allows for larger volumes of water to infiltrate into the ground, recharging groundwater supplies.

Intermittent streams are an essential source of food and water for wildlife, and are often the only source of water in higher elevation areas. The moist soils that border intermittent streams are significantly richer in herbaceous vegetation and flowering/fruitleting plants – the base trophic level of food – than surrounding upland areas. During all seasons, but especially in winter and spring, intermittent streams act as essential corridors for animal movement when food is scarce. Some animals, such as pickerel frogs and eastern red-spotted newts, rely heavily on intermittent streams for movement.

For these reasons, the upland areas adjacent to intermittent streams are heavily utilized by wildlife for living space, breeding, feeding, migrating, dispersal, and security. Accordingly, the bylaw and these regulations protect streams of all forms (Section II – Definitions) and the buffer zone within 100 feet of those streams.

## V. FILING FEES AND REQUIREMENTS

### A. Filing Fees

#### 1. Preamble

- a. Any person filing an Application for Permit, Request for Determination or Abbreviated Notice of Resource Area Delineation pursuant to the bylaw shall, at the same time, pay a filing fee in accordance with the Filing Fee Schedule.
- b. If the project is other than an addition or alteration to a one-family or two-family dwelling or related parking structures, the person shall agree, in writing, to pay the fees, costs, and expenses of any expert consultant deemed necessary by the Commission to review the Application for Permit, Request for Determination or Abbreviated Notice of Resource Area Delineation.
- c. Municipal projects are exempt from these requirements.

#### 2. Permit Fee Schedules

- a. Request for Determination/Abbreviated Notice of Resource Area Delineation
  - i. To determine if the bylaw applies to land or proposed work - \$0
  - ii. To request formal review of Areas Subject to Protection under the bylaw - \$50 for first 3 acres plus \$10/acre above 3 acres of land or project area subject to ANORAD.
- b. Permit Application

No fees shall be charged for review of repairs to or replacement of a septic system. Other projects are subject to the following fee schedule:

  - i. Minor project (house addition, tennis court, swimming pool, and utility work,) - \$50;
  - ii. Single family home (including accessory structures, driveways and utilities) - \$100;
  - iii. Multiple dwelling structure (including accessory structures, driveways and utilities) - \$200;
  - iv. Subdivisions (roads, utilities and stormwater management only)
    - Conventional Subdivisions
      - Less than 10 lots - \$750
      - 10 of more lots - \$1,500
    - Open Space Subdivisions - \$500
  - v. Commercial and industrial projects - \$300
  - vi. Resource area enhancement [pursuant to 310 CMR 10.53(4)] - \$50
  - vii. Dredging activities - \$150
  - viii. Any other activity not included in categories above - \$50
  - ix. An additional \$100 fee will be charged if the project requires wetland replication as a result of direct wetland impacts, or requires filling of Land Subject to Flooding.
  - x. All permit applications filed after the work has commenced will be charged double the appropriate filing fee.
  - xi. Permit applications are also subject to an advertising fee if not filed concurrently with a permit application under the Massachusetts Wetlands Protection Act.
  - xii. Permit applications may also be subject to a variable fee to be set by the Commission. The variable fee shall be an amount to be incurred by the Commission to retain independent engineering, scientific or other advice deemed necessary by

- c. Amendments to Orders of Conditions (that require a hearing) - \$25
- d. Certificates of Compliance - \$0
- e. Payment - The fixed fee shall be payable upon filing of the application. Failure to pay the fixed fee when due shall cause the application to be deemed incomplete. The advertising fee shall be payable upon commencement of the hearing. Failure to pay the advertising fee when due shall constitute sufficient cause to continue the hearing.

## **B. Requirements**

1. **General.** Plans shall describe the proposed activity and its effect on the environment. All plans, drawing, sketches, and calculations shall be dated and signed by the person responsible for their preparation. Plans and drawings involving the practice of surveying or engineering shall be stamped and signed by a professional surveyor or engineer registered in the Commonwealth of Massachusetts, if required by the Commission. Plans shall be consistent with those submitted to the Board of Appeals, Planning Board and/or Board of Health. It is not anticipated that minor projects on existing lots would be required to submit detailed engineering plans. Informal consultations with the Commission regarding the applicability of these requirements for a project are encouraged.
2. **Plan Requirements.** The purpose of plans is to identify the site and nearby features. Plans shall include, but not be limited to, the following features:
  - a. An 8.5 x 11 inch copy of a U.S. Geological Survey map or equivalent topographic map showing the location of the proposed activity;
  - b. Names of all nearby roads and streets, and the site street address along with the Assessor Map Number and Parcel Number;
  - c. Outline of the wetland resource areas related to the proposed activity, including floodplains;
  - d. Property lines, including distances, and the names of owners.
3. **Field Requirements.** The purpose of field requirements is to allow the Commission to properly and accurately view existing and proposed site conditions in order to assess compliance with the Wetlands Bylaw. Project sites should include, but not be limited to, the following features:
  - a. Resource Areas delineated by a professional with knowledge of wetland vegetation and soils;
  - b. Location of all Resource Areas marked with a numbered sequence of flags in the field, corresponding to information provided on project plans submitted with a permit application;
  - c. Corners of all proposed buildings or structures within 100 feet of wetland resource areas clearly marked by stakes corresponding to information provided on project plans submitted with a permit application.

4. **Engineering Drawings and Information.** The purpose of engineering drawings and information is to describe the proposed activity and its impact. Engineering drawings may be required by the Commission to include, but not be limited to, the following features:
- a. A title designating the project location, the name of the person preparing the drawings, the date prepared, including latest revision dates, and an identifying reference number;
  - b. Present and proposed contours of the entire site and affected adjacent areas. Generally, 2-foot contours should be shown;
  - c. Location, dimensions and area of all present and proposed structures and paved areas;
  - d. Location of any underground utilities;
  - e. Present and proposed location of all rights of way and easements;
  - f. Location of proposed and existing water retention areas and all existing and proposed storm drainage pipes, ditches, structures, culverts, and outfalls fully described with information on inverts, slopes, materials, entrance and outlet conditions, bedding in unstable soils, details of drainage structures and endwalls, and other standard engineering data on such work;
  - g. Sewage disposal systems, specifically showing the location and type to be used in compliance with state and local environmental codes;
  - h. Locations and elevations of cellars or floors and bottoms of septic systems and leaching fields, and any alternate sites;
  - i. Delineation of all Resource Areas and the Buffer Zone, whether continuous or intermittent, natural or man-made;
  - j. Flood plains and flood hazard areas;
  - k. Location of areas to be removed, dredged, filled or altered;
  - l. Cross sections showing slope, bank, and bottom treatment of each watercourse to be altered (Locations of cross sections to be specified.);
  - m. Typical cross-sections, elevations and stability calculations for water retaining weirs, dams and dikes, and of earth retaining structures alongside open waterways and wetlands;
  - n. Soil characteristics in representative portions of the site, including characteristics of hydric soils;
  - o. Locations, logs, and water table information from all test borings, test pits, percolations tests, and other subsurface explorations;
  - p. The ground water elevations within proposed areas of work based on direct observation or indirect characteristics (e.g., soil features) if deemed necessary by the Commission;
  - q. All calculations necessary to show the effect of the proposed activity on soil and water;
  - r. The location of any spoil areas;
  - s. Erosion and sedimentation prevention plans during and after construction;
  - t. Based on the drainage areas and physical features shown on the plans, calculation of runoff volumes, peak discharge rates, velocities and times of concentration for 24 hour duration storms of return periods of 2, 10, and 100 years (Calculations must show the existing condition, the condition at completion of the proposed work, and the condition upon further development planned or reasonably

anticipated for the site; the 100-year, 24-hour storm shall be evaluated to show that there will be no increase in offsite flooding impacts.).

- u. Layout and site plans drawn at commonly acceptable scales, preferably 20 feet to the inch, with detail and profile drawings drawn to the appropriate scales;
5. **Construction Methods.** The applicant shall include a description of construction methods and, in particular, measures to minimize erosion, pollution, and damage to the biological environment both within and beyond the actual construction area, including the following:
- a. Methods of erosion control during construction, including sedimentation ponds and slope protection;
  - b. Methods for protecting stripped and cleared areas of the site during extended shutdown due to weather, economic conditions, or any other cause;
  - c. Methods of stockpiling excavated wetland spoil on the site or of transportation to offsite locations, as applicable;
  - d. Proposed sequence of construction of retaining basins, vegetation clearing and landfilling, grading or excavating;
  - e. Methods of preventing construction vehicles or equipment from transporting or depositing mud, dirt or debris on roadways as they leave the project site.
  - f. Methods of removing erosion control measures after the project site has been stabilized.
6. **Environmental Impact Report.** If an applicant is required by the Executive Office of Environmental Affairs to prepare an Environmental Impact Report (EIR) and if the EIR scope includes impacts on any Resource Area, the Commission shall consider the EIR in any decision pursuant to the bylaw. The Commission shall have authority to continue its hearing under the bylaw until the final EIR is certified by the Secretary of Environmental Affairs as complying with the Massachusetts Environmental Policy Act.
7. **Other Information.** The requirements stated above are not definitive or exclusive. Some may be omitted in a particular case, and an applicant may be required to submit other additional information deemed necessary to determine compliance with the Wetlands Bylaw. The Commission encourages applicants and their consultants to schedule a pre-filing conference to ascertain information requirements for specific projects.
8. **Failure to Provide Information.** Pursuant to Section 12 of the bylaw, failure to provide information required by these regulations or other information requested by the Commission to produce adequate evidence to satisfy the applicant's burden of proof shall constitute sufficient cause for a denial of a Permit.

## VI. AMENDMENTS

These rules and regulations may be amended from time to time by a majority vote of the Commission if, prior to such a vote, the Commission has held a public hearing on the proposed changes.